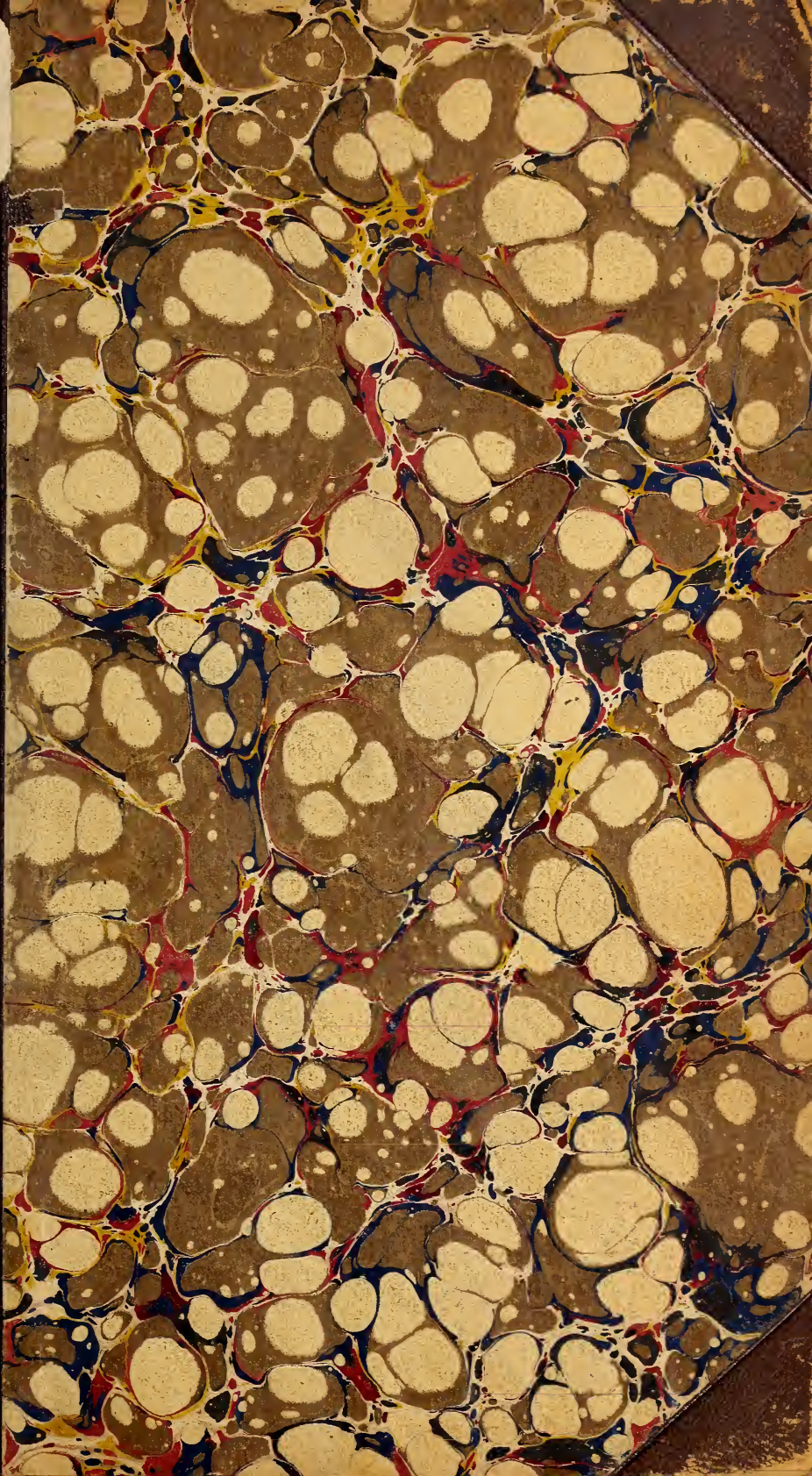


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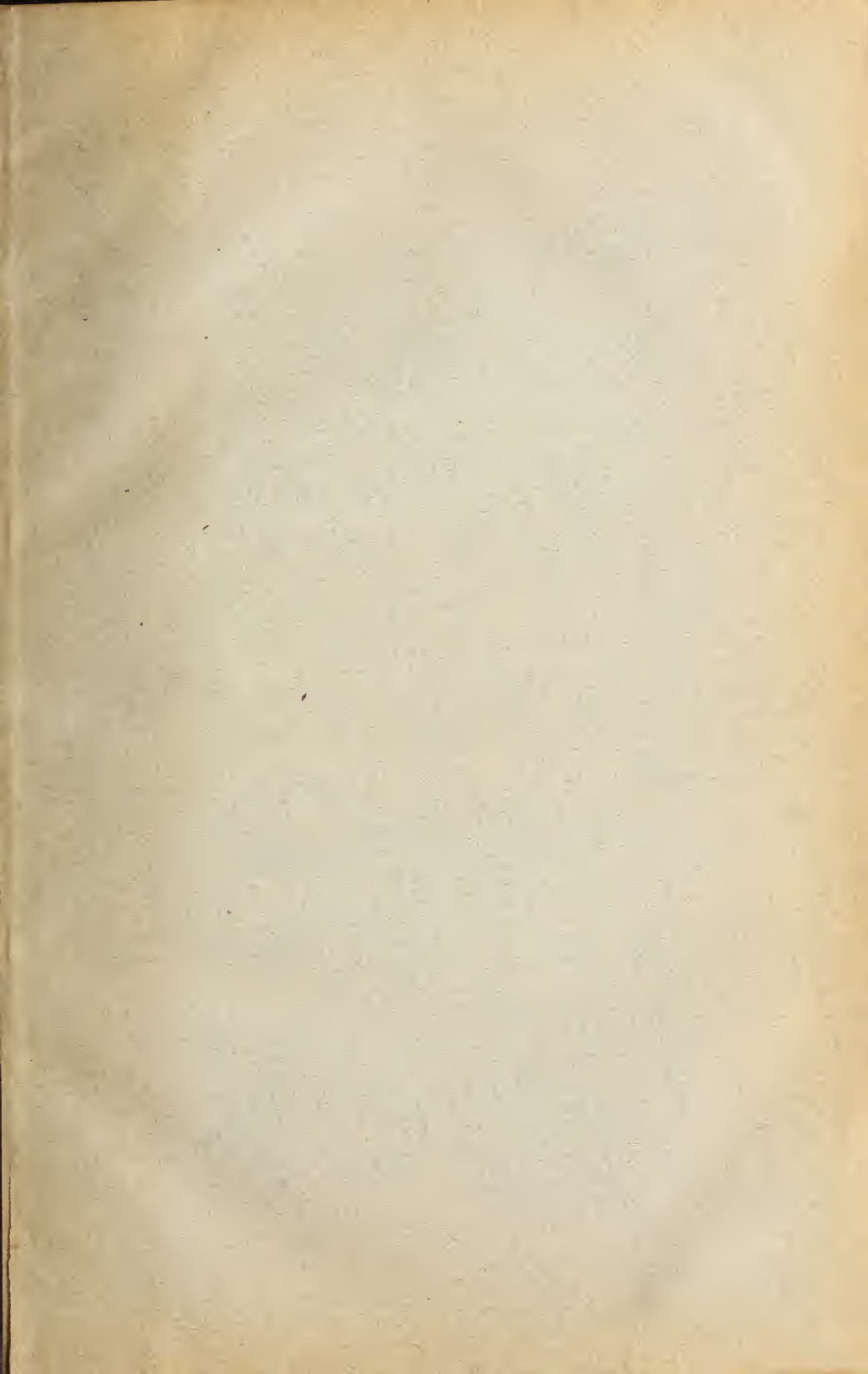
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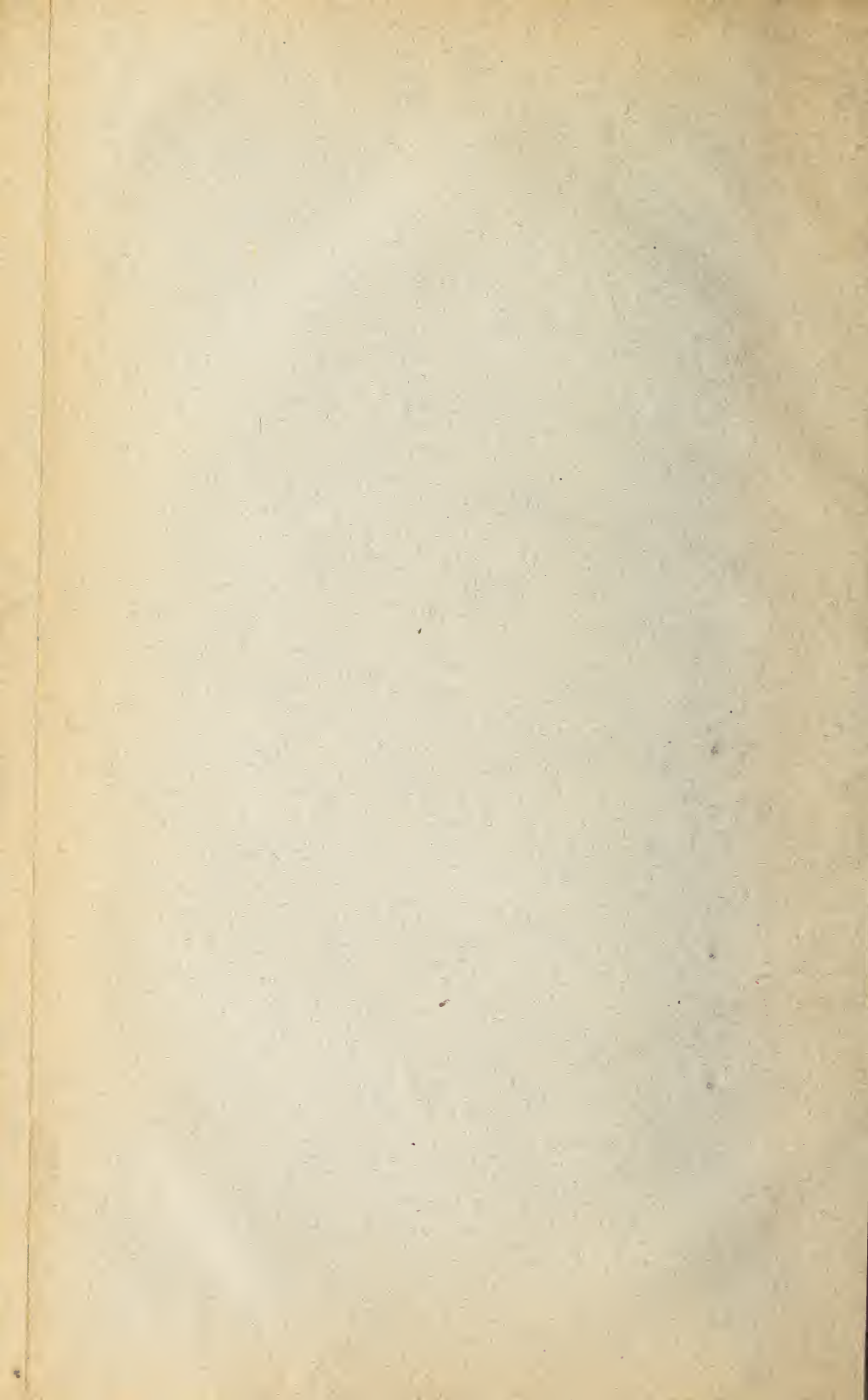


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DEPARTMENT OF  
ECCLESIASTICAL POLITY AND LAW  
IN THE  
✓  
GENERAL THEOLOGICAL SEMINARY  
OF THE  
**Protestant Episcopal Church in the U. S.**

FRANCIS VINTON, S.T.D., D.C.L.

CHARLES AND ELIZABETH LUDLOW PROFESSOR OF ECCLESIASTICAL POLITY AND LAW AND ASSISTANT  
MINISTER OF TRINITY CHURCH, N. Y.,

1869.

INTRODUCTION.  
QUESTIONS AND ANSWERS

ON THE  
Common Law of the Church,

WITH APPENDIX, EXPLAINING,

1. The Spiritual Courts and Proceedings of the Church of England.
2. The manner of Electing and Consecrating Archbishops and Bishops in the Church of England.

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Bel. Rev William Stevens Perry  
with affectionate regards  
of his friend & brother  
James Vinton

## QUESTIONS AND ANSWERS IN ECCLESIASTICAL LAW.

### THE GRAND DIVISIONS OF THE LAW OF THE CHURCH IN THE UNITED STATES.

- (1) Constitution and Canons of the General Convention.
- (2)       “               “               “       several Dioceses.
- (3) The Rubrics of the Church and (in some particulars)  
the Articles.
- (4) The Secular Laws of the State, affecting Churches  
in regard to Corporate and personal rights, and  
the acquisition and preservation of property.
- (5) The Ecclesiastical Law of England, applicable to  
the Church in the United States, and not abro-  
gated by Constitution nor Canons.

### THE EXTENT, THE LIMITS, AND THE MODIFICATION OF THE ECC'L LAW OF ENGLAND IN THE U. S.

Q. What is the *Extent* of the Authority of the Ecc'l Law of England in the U. S.?

A. (1) Our ancestors from England brought “as much of English Law and Liberty with them as the nature of things will bear,” both in Church and State. Kent's Commentaries, vol. i., p. 472. Chalmer's Opinion of Eminent Lawyers, vol. i., p. 194. As to Ecc'l Law, Gaskins vs. Gaskins, 3 Iredells Law Rep. 155, N. Car.

(2) The *Canon* Law is a part of the Common Law (*e. g.* as to Testaments) except where our *Statutes* have altered it. Bogardus vs. Smith, 4 Paige Rep. 178.

Q. What are *Limitations* on the Canon Law of England in this Country?

- A. (1) In all things where the Church is considered as an *Establishment*, as (1) The Royal Supremacy. 26 Henry viii., c. i.  
(2) Statutes of Uniformity. 13 Car. ii., c. 4; 6 Ann c. 5.

Q. What are the *Modifications* of the Limitations which partially re-established the Church of England in the Colonies?

- A. The Acts of the Colonial Governments. Hoff., pp. 16-19.

(1) COLONY OF NEW YORK.

Charter of Duke of York (1664 to 1683) excluded all but Protestant ministers. People were assessed for support of the ministry in A. D. 1672, '75, '93, 1695, 1705, and until 1784.

(2) SOUTH CAROLINA. Hoff., pp. 19-20.

Charter to Earl of Clarendon and others gave them right of Patronage and Advowson according to Ecc'l Law of the Church of England, with exemption from Conformity to Liturgy and Articles. Act of Legislature gave liberty of Conscience 1696-'97. Act of Legislature established Church of England 1698 and in 1706. Continued to the Revolution, 1783.

(3) VIRGINIA.

Colonial Legislature. Church of England established in 1619, '21, '22. Clergy invested with Glebe of 100 acres and revenue £200. Canons of Ch. of Eng. made obligatory A. D. 1624. Subscription to Constitution and Laws of Ch. of Eng. required, A.D. 1642, and Letters of Ordination by a Bishop of Ch. of Eng. A. D. 1662. Vestrymen must make Oath of Allegiance and Supremacy, and subscribe Declaration of Conformity to Doctrine and Discipline, A. D. 1662. The English Act of Toleration applied to Virginia A. D. 1745, under which Presbyterianism arose and flourished. All Qualifications and Restrictions removed by repeal A. D. 1776.

(4) MARYLAND. Hoff., p. 21.

Colonial Legislature. Church recognized as an Establishment, A. D. 1692. Tax laid for support of Epis. Clergy, A. D. 1692. All rights, privileges, &c., of Ch. of Eng. then or *thereafter* established by Laws of Eng. were established A. D. 1696. This Act failed of Royal assent, but was re-







newed and perfected A. D. 1702. English Act of Toleration was extended to Quakers and Protestant Dissenters A. D. 1702. A rigid intolerance, in this Law, towards Papists was passed unanimously A. D. 1702. The Legislature, in a violent reaction, persisted in assaults upon the Church and the rights and property of the Clergy, "even to outrage," till A. D. 1776. The Church was disestablished by law in November, 1776. Henceforward there were no taxes for support of Clergy, yet the Legislature secured to the Church Glebes and other property.

Q. By whom was the Ch. of Eng. established in this country?  
Hoff. p. 23.

A. By the Colonial Assemblies.

Q. Did the Government of England prescribe the Establishment?

A. No.

Q. Did Parliament?

A. No.

Q. Did the King?

A. By Instructions and Proclamations.

Q. What authority had the King in the Premises?

A. None.

Q. What Power in England could establish the Church?

A. The King and Parliament and Convocation.

Q. What was the Supreme Authority in the Saxon Church?

A. The Monarch, Priests, and Nobles framed Laws for both Church and State in the Wittenagemote. See Dawson's *Origo Legum*, Book vi., chap. 3, 4, Churton's *History Anglo Saxons*, Sharon Turner's *Anglo Saxons*, Palgrave's *Anglo Saxons*.

Q. How did the Royal Governors in the Colonies justify their acts? (for example, not to prefer any to Ec. Benefices, except persons lawfully ordained?)

A. By the Instructions and Proclamations of the King?

Q. What effect on Colonial Society did the Governor's recognition of the King's sole prerogative produce?

A. Agitation, dissatisfaction.

Q. What apology for the Royal Governors may be offered?

A. Some believed in the legality of the Royal Proclamations and Instructions. Some believed that there was no salvation out of the Ch. of Eng. Some acted in the spirit of Intolerance.

Q. What was the spirit of the age?

A. That of Intolerance.

Q. Mention an Act of Intolerance of the Virginia Legislature in 1642? Hoff., p. 24.

A. The Delegates from the Ministers of Boston were silenced under pain of banishment.

Q. Mention contemporaneous Legislation in Massachusetts?

A. The exiled Quaker was doomed to death if he returned.

Q. Did the Ch. of England in the Colonies owe its existence and support to the Government of England?

A. Not at all; it was neglected and unnoticed.

Q. What notable example of earnest and successful rebuke of the indifference of Parliament occurred about this time?

A. That of George Berkeley, Dean of Derry, afterwards Bishop of Cloyne. The Parliament, during Walpole's administration, 1723 to 1742, appropriated £20,000 to found a College in America (Bermudas) A. D. 1727.

Q. Was the money paid?

A. No! Walpole sequestered the money, and plundered the fund, to swell the nuptial pomp of a Princess.

Q. What else characterized the age?

A. Philosophic infidelity.

Q. To whom, under God, is the Church indebted, in this country, for existence, for support, and for the spread of sound doctrines and the Catholic faith?

A. To "the Society for the Propagation of the Gospel in Foreign parts."

Q. What, briefly, will you say of this venerable Society?

A. It was founded 1701, specially by exertions of Dr. Bray, Commissioner for Maryland, with devout men of England. Its object was "Receiving and managing contributions for religious instruction of emigrants, maintenance of clergymen in the plantations, colonies, &c., and for 'the general Propagation of the Gospel.'" Hoff., p. 25.

Q. Who was the "Ordinary" or Bishop of the Church in the Colonies?

A. Bishop of London.

Q. Whence did he derive his authority? A. D. 1723.

A. From the King's Commission.

Q. How did the Bishop of London exercise a personal oversight?







A. By Commissaries for various Colonies.

Q. Name the Commissaries of the Bishop of London in the Colonies? Hoff. p. 26, note.

A. Rev. Mr. Johnson for South Carolina, 1707; Rev. Messrs. Henderson and Wilkinson, Maryland, Eastern and Western Shores, 1716; Rev. Dr. Bray, North Carolina, 1703; Rev. Dr. Blair, Virginia, 1689; Rev. Mr. Vesey, New York, 1713.

Q. Did the Colonial Church apply for Commissaries?

A. Yes: Maryland in 1687.

Q. What attempt by a Colonial Legislature was made against the rights of the Clergy and the prerogative of the Bishop of London?

A. By the Assembly of South Carolina in 1704, depriving a Clergyman, Rev. Edward Marston, of his Ecc'l Function and Office; also, in 1704, by establishing a Lay Tribunal for the trial of Clergymen.

Q. Was this Act of the Legislature resisted?

A. Yes: both by Churchmen and Dissenters, by the House of Lords, and by the V. S. P. Gospel.

Q. How was the outrage remedied?

A. The Queen (Ann) declared the Laws null and void, and the Colonial Assembly repealed them in 1706.

Q. What other instances of attempts to bring Clergymen of the Church under Lay jurisdiction?

A. In Maryland, by one of the Parishes, on appeal to the Governor in 1704. Again: In Maryland, by Beardsley introducing a Bill to establish a Court of Laymen for the trial of Clergymen.

Q. What course was pursued in Conformity with Ecc'l Law?

A. The Governor sent three Clergymen into the Parish as a Commission of Enquiry, to obtain facts "*to lay before the Bishop,*" and thus conformed to the Law and usage of the Church of Eng.

Q. What Ecc'l Law of England ruled the case?

A. By Canons 109, 110, 111, 112, 113. the Church warden, the Church warden with the minister, or the minister alone, present to the Bishop charges against both Ministers and Laymen.

Q. What Acts further confirmed the exclusive jurisdiction of the Bishop of London?

A. The attempt to procure an Act from the Assembly of Maryland, recognizing the authority of the Bishop of London, sought for by the Governor: but opposed by the Bishop and by the Commis-

sary, the Rev. Mr. Henderson, as *unnecessary*, because the Bishop possessed the Authority already, by Divine right, and by the Law of England. Hoff., 28, 29; Hawk's Contributions, vol. ii., p. 139.

Q. What was the effect, finally, of these struggles?

A. The general acquiescence in the Ecc'l Law of England in the premises, and the facilitating of the *exercise* of the exclusive jurisdiction of the Bishop of London.

Q. What custom of the Clergy, in Connecticut *specially*, exhibits the Identity of the Church of England and the Church in the Colonies?

A. (1) The Custom of the Clergy in Connecticut to meet in *Convention*, and to transact such business as lay in their power.

(2) The style of their address, "We, the Clergy of the Ch. of England, in voluntary Convention, assembled, May 28, 1776, Wallingford.

(3) In the recognition of the Bishop of London as their Diocesan to ordain to Holy Orders Abraham Beach, J. Nichols, and others; and in acquainting the Bishop of London with the conduct and condition of the Churches: this recognition running through several years, 1774-1781.

Q. What do these historical facts indicate, in respect to the Identity of the Church of England and the Episcopal Church in the Colonies?

A. Their essential identity, in the pervading spirit of the Ecc'l Law, and in the Faith, the Doctrine, and the Discipline of the Church of England, avowed and practiced in the Church of the Colonies.

Q. Was the Ecc'l Law of England in any way modified?

A. Yes; by the Colonial usages and jurisprudence, as the offspring of their necessities and position among Dissenters.

Q. How did this Common Law of the Prot. Episcopal Church in the United States develop itself?

A. By peculiar Usages and Statutes in the Colonies, and by the Independence of the United States.

Q. Was there any violent disruption at the Revolution, between the Church of England and the Episcopal Church in the United States?

A. No; "The daughter glided from the mother's side, by the allotment of Divine Providence, but maintained her spiritual union of Faith, of Worship, and of Discipline."







Q. What were some of the Acts of the Church in the several States prior to the organization of the General Convention ?

VIRGINIA.

- A. (1) The Convention of Virginia, on July 5, 1776, altered the Book of Common Prayer to accommodate it to the change of political relations with Eng. Hoff., pp. 31, 32.
- (2) The Act of the Assembly of Virginia in 1784 required Vestrymen to subscribe a Declaration of Conformity to the Doctrine, Discipline, and Worship of *the Prot. Epis. Church*.
- (3) The Assembly of 1785 ordered that the Liturgy of the Church of England should be used with such alterations *only* as the American Revolution had rendered necessary.
- (4) The Convention in Virginia, 1790, Resolved, that the Glebes and other property held by the Ch. of England, in Virginia, at the commencement of the Revolution, were exclusively owned by the Prot. Epis. Ch. in Virginia. This heritage of succession was confirmed to the Prot. Epis. Ch. in 1799, by the opinions of Bushrod Washington, Edmund Randolph, and others. Hoff., L. C., pp. 31-32. Hawk's Contrib., Vol. I. p 209.

MARYLAND.

- (1) The civil authority of Maryland, in 1775, prescribed the form of prayer for the new Government, and required an oath of the clergy to support it.
- (2) The Church in Maryland, in 1783, declared her "*right to preserve and complete herself as an entire Church, agreeably to her ancient usages and professions*;" and that she "possessed the Spiritual powers essential to the being of a Church, independent of foreign jurisdiction, so far as consistent with the civil rights of society." Hoff., p 32. Hawk's Contrib., Vol. II. p 330.
- (3) That the Glebe and other property of the Ch. of England had passed to the Prot. Epis. Ch. in Maryland.
- (4) That it would be the duty of the Church, when duly organized in a Synod of the different orders of her *ministers and people*, to revise the Liturgy, &c., in order to adapt it *to the local circumstances of America, without any other departure from the Ch. of England than may be found*

*expedient in the change of a daughter to a sister Church.*  
Hoff., p 32.

- (4) The Vestry Act of the State of Maryland was adopted by the Church as part of its organization, and contains the clause expressly recognizing the Church of England as having been *the same* as the Prot. Epis. Ch. of Maryland. See Compilation of Constitution, Balt. 1849, p. 275. Hawk's Contrib. Vol. IV., p 330.

#### SOUTH CAROLINA.

The Constitution of S. C., May 31, 1786, declared that the Doctrines of the Gospel be maintained in conformity, as near as may be, to the Liturgy of the Ch. of England. Dalcho's History, p 474.

#### PENNSYLVANIA.

In the fundamental Articles adopted by Pennsylvania, May 1784, one of them was that, "the Liturgy of the Ch. of England should be the Liturgy of the Prot. Epis. Ch. as far as shall be consistent with the American Revolution and the Constitution of the several States." White's Memoirs, p 73.

#### MASSACHUSETTS.

Massachusetts declared certain articles in language almost identical with that of Pennsylvania. White's Memoirs, p 69.

#### NEW JERSEY.

New Jersey set forth rules and regulations, May 1786. The 9th Rule required from every clergyman that he engaged to conform to the discipline, doctrines, and worship of the Church, as contained in the Book of Common Prayer of the Ch. of England, "except the political alterations in the mode of worship made therein by the Convention held in Philadelphia, from the 27th Sept. to the 7th Oct., 1785." Hoff., L. C., p 33, 34.

This Convention, after debate, (1786), memorialized the General Convention to "remove every cause that may have excited any jealousy or fear that the Epis. Ch. in the U. S. of America has any intention or desire, essentially to depart, either in doctrine or discipline, from the Church of England, but, on the contrary, to convince the world that it is their wish and intention





“to maintain the doctrines of the Gospel as now held by  
 “the Church of England, and to adhere to the Liturgy  
 “of the said Church, as far as shall be consistent with  
 “the American Revolution and the Constitutions of the  
 “several States.” Proceedings of the Convention of  
 N. J., Trenton, 1787.

In the same memorial is this passage :

“We are very apprehensive, that, until alterations can  
 “be made *consistent with the customs of the Primitive*  
 “*Church, and with the rules of the Church of England,*  
 “from which it is our boast to have descended, a ratifi-  
 “cation of them would create great uneasiness.” White’s  
 Memoirs of the Ch., p 299.

#### NEW YORK :

In New York, the Convention in 1790, “Resolved, That  
 the *Articles of the Church of England*, as they now stand,  
 except such part thereof as affect the political govern-  
 ment of this country, be held in full force and virtue  
 until a further provision is made by the General Con-  
 vention.” Journals, 1790. p 39. In 1801 the Church  
 in N. Y. instructed the Deputies to advocate the Resolu-  
 tion of 1790, in the General Convention. Journal N. Y.  
 Convention, 1801. Hoff., p 34.

#### CONNECTICUT.

A letter of Doctor (afterwards Bishop) Jarvis, dated  
 May 1786, expresses the views of the clergy of Conn.,  
 that “In the planting and growth of the Church in  
 “America, the Church of England was perpetuated and  
 “enlarged. That our Church was, in her original, a  
 “part, and is, in her formation, the image of the Church  
 “of England, and that it was expedient to declare so au-  
 “thoritatively.” Hoff., p 35.

#### THE PROT. EPIS. CHURCH.

- (1) The Bishops, the Clergy, and the Laity in General Con-  
 vention 1789, (16th October,) set forth “the *Book of*  
*Common Prayer, Administration of the Sacraments, and*  
*other Rites and Ceremonies,*” declaring it to be the Liturgy  
 of this Church, to be in use on and after the 1st day of  
 October, 1790.
- (2) In 1801 the General Convention established the *Articles*

*of Religion*, "agreeing, as far as possible, with those of the Church of England."

- (3) In 1814 The House of Bishops and the Houses of Clerical and Lay Deputies united in this Declaration: "It having been credibly stated to the House of Bishops that on a question in reference to property devised before the Revolution to congregations belonging to the Church of England, and to uses connected with that name, some doubts have been entertained in regard to the *Identity of the Body* to which the two names have been applied, the House thinks it expedient to make these declarations, and to request the concurrence of the House of Clerical and Lay Deputies therein, viz: *That the Prot. Epis. Church in the U. S. of America, is the same body heretofore known in these States by the name of the Church of England: the change of name, although not of religious principle in doctrine, or in worship, or in discipline, being induced by a characteristic of the Church of England, supposing the independence of the Christian Churches under the different sovereignties, to which respectively their allegiance, in civil concerns, belongs.*" Hoff., p 35, 36. Journal General Convention, 1814.

THE PROT. EPIS. CHURCH in General Convention, *with the acquiescence of the whole Church.*

The Preface to the Book of Common Prayer expresses the voice of the Supreme Legislature and of the Church at large, from 1789 to this day, in this passage: "It seems unnecessary "to enumerate all the different alterations and amendments. "They will appear, and it is to be hoped the reason of "them also, upon a comparison of this with the Book of Common "Prayer of the Church of England. In it will also appear, that "this Church is far from intending to depart from the Church "of England in any essential point of doctrine, discipline, or wor- "ship, or further than local circumstances require."

Q. What is the summary of the proofs that the Prot. Epis. Church in the U. S., is Identical with the Church of England: and as such, is a living and independent branch of the Church Catholic, and subject to the Catholic Law of the Church and to the Ec. Law of England, so far as those laws are applicable, and not superseded by Special Canon Law of the Prot. Epis. Church in the U. S.







A. (1) The decided voice of the Church, separately expressed by the Churches in the Colonies; and then (2) uttered by the representative body of whole union in General Convention; (3) by official action; and (4) especially, by the adoption of the "*Book of Common Prayer and Administration of the Sacraments and other Rites and Ceremonies of the Church, declaring it to be the Liturgy of the Church, and requiring that it be received as such by all the members of the same,*" and finally (5) by the establishment of the "*Articles of Religion,*" *departing from the Church of England in not any essential point of doctrine, discipline, or worship, or further than local circumstances require;* and (6) by the unbroken acquiescence and consent of the whole people; and (7) by the decisions of Secular Courts of Law, vesting the rights to property held by the Church of England in the Colonies, in the Prot. Epis. Ch. in the U. S.

Q. In what does the Identity of the Ch. of Eng. with the Prot. Epis. Ch. consist?

A. (1) In that the Liturgy of the Ch. of England was substantially retained.

(2) In that the Articles were established with some appropriate variations.

(3) In that the Faith was adhered to, whole and undefiled.

(4) In that the Sacraments were duly preserved and administered.

(5) In that the Apostolic Episcopal regimine was transmitted and received.

(6) In that the Discipline of the Church of England—including Laws and Canons for rule and government—as far (and in every particular as far) as it was not necessarily, or by express enactment, changed, was continued and perpetuated. Hoff., p 38.

Q. What opposing view of the relation of the Church of England and the Prot. Epis. Church in the U. S. has been entertained and debated?

A. "That the Prot. Epis. Church possesses no Institutions until made for her specially;" or in other words, that "we are "no further bound, by either the Catholic or English Canons, "when confessedly applicable, than as we distinctly and by legisla-

"tion recognize them." Hoff., p 37. Note. Wilson's Life of Bp. White, Appendix 348. Pub. Ass'n Alumni, p 59.

Q. What distinguished body set forth this opponent view?

A. The House of Clerical and Lay Deputies in 1789.

Q. Where will you find a full account of those discussions?

A. In Bishop White's Memoirs of the Church, pp 175, et seq.

Q. What does Bishop White say of these opponent opinions expressed in the lower House in 1789?

A. He says, "If the matter had been so understood at the close of the Revolutionary War, and there had been among us such spirits as I can now designate, it would have torn us to pieces." Appendix to Wilson's Life of Bishop White, p 348. Hoff., p 37.

Q. Did the opinion of the House of Clerical and Lay Deputies of 1789 prevail?

A. No. It was opposed to that of the House of Bishops in that General Convention, and to that of both Houses in the previous and subsequent Conventions: and being confined to the one house, and not, at any time, pursued afterwards, it may not be considered as having prevailed in the Church.

Q. What would such opinions, if prevailing, reduce the Church to?

A. They would have reduced the Prot. Epis. Ch. in the U. S. to the level of one of the Sects of Christianity.

Q. What just dignity do the prevailing sentiments of the Prot. Epis. Ch., in regard to her continuous relations with the Mother or Sister Church of England exhibit.

A. They illustrate her dignity as a component part of the One Holy, Catholic, and Apostolic Church, inheriting the promises of her Lord to the organic Body and amenable to the unrevoked and applicable Laws of the whole Church.

Q. State some of the Dicta of received and learned commentators on the question?

A. (1) Bp. White. "In all other respects, except in prayers for Civil Rulers, (a duty bound on us by a higher authority than that of the Church) I hold the former ecclesiastical system (of the Church of England) to be binding." Appendix to Wilson's Life of Bp. White, p 347. "The Episcopal Church in the United States of America is precisely in succession, the body formerly known as the







Church of England in America." Bp White Comp. View of the Calvinistic and Armenian Controversy, Vol. II., p 191.

- (2) Dr. Hawks. "The opinions which were entertained in the mother country, and the decisions which had been made on matters of Ecclesiastical Law, or usage, up to the severance of these Colonies by the Revolution, were, as far as applicable, held to be the guide of the Church of England here; and although the independence of the U. S. dissolved the connection, it evidently did not destroy the prevailing opinions among Churchmen as to matters and usages touching the Church. To the Common and Canon Law of England we must therefore look, if we would fully understand the origin of much of the Law of our own Church." Hawk's Constitution and Canons, p 265.
- (3) Hoffman on the Law of the Church. Introduction and throughout.
- (4) Bishop Odenheimer. Quotes Bp. White from the Church Register, January 1826, on "PRIMITIVE FACTS." "In the Church of England it is provided that nothing shall be adjudged heresy, besides what has been pronounced such by some one of the first four General Councils; and although this rests on the authority of an Act of Parliament, which is of no force in the Church of the U. S., it is historic evidence of the sense of the Church of England, and of course ours, *which has inherited from her all the principles of our ecclesiastical system.* In that point of view it remains in proof of the respect for the sense of the early ages of the Church which has descended to us."
 

Again, in his work on "the Ordination Office," Bp. White says: "He considers all ecclesiastical institutions which existed before the American Revolution as continuing after it, until altered by competent authority." "From a consideration, therefore, of the *principle* on which our Church assumed her present independent position," Bishop Odenheimer says, "it appears to me a true view to maintain our right to the Ante-Revolution Canon Law of the English Church, in all points applicable, and where it has not been distinctly rejected or provided for by

our own Canonical Legislation." See Odenheimer's Essay, Alumni Association, 1847, pp. 58, 59.

"Whatever Canon Law was received by the Church of England up to the period of our separate organization belongs to us, in all points applicable, as matter of right. In the first place, as claiming to be a branch of Catholic Church, I maintain that we possess as part of our Canon Law, the CATHOLIC CODE."

"In addition, I would say, that as originally a portion of the English Church under the jurisdiction of the Bishop of London, we possess as our birthright, the Catholic Code, as part of English Ecclesiastical Law. The Catholic Canon Law, in all points applicable, belongs to us, until we expressly disclaim its possession. This disclaimer has not been made and can never be made with safety to our claim to be a branch of the Church Universal. For, in the language of Bishop Beveridge (Conc : ad Synod, 1689). "*Illud abrogare, aut rejicere, quod semper et ubique observatum fuit, non est Ecclesiasticum tantum ritum, sed ipsam ecclesiam mutare, et diversam efficere ab omnibus aliis Dei ecclesiis.*"

Odenheimer's Essay Alumni Association, 1847, p 55.

Q. Will you mention a recognition of the "Ancient Canons" as being cognate with Holy Scripture and as authority in this Church?

A. At the consecration of a Bishop, the Presiding Bishop, sitting in his chair, shall say to him that is to be consecrated—"Brother, forasmuch as the Holy Scripture and the Ancient Canons, Command, &c."

Q. Do these Ancient Canons form part of the Catholic Code?

A. Yes.

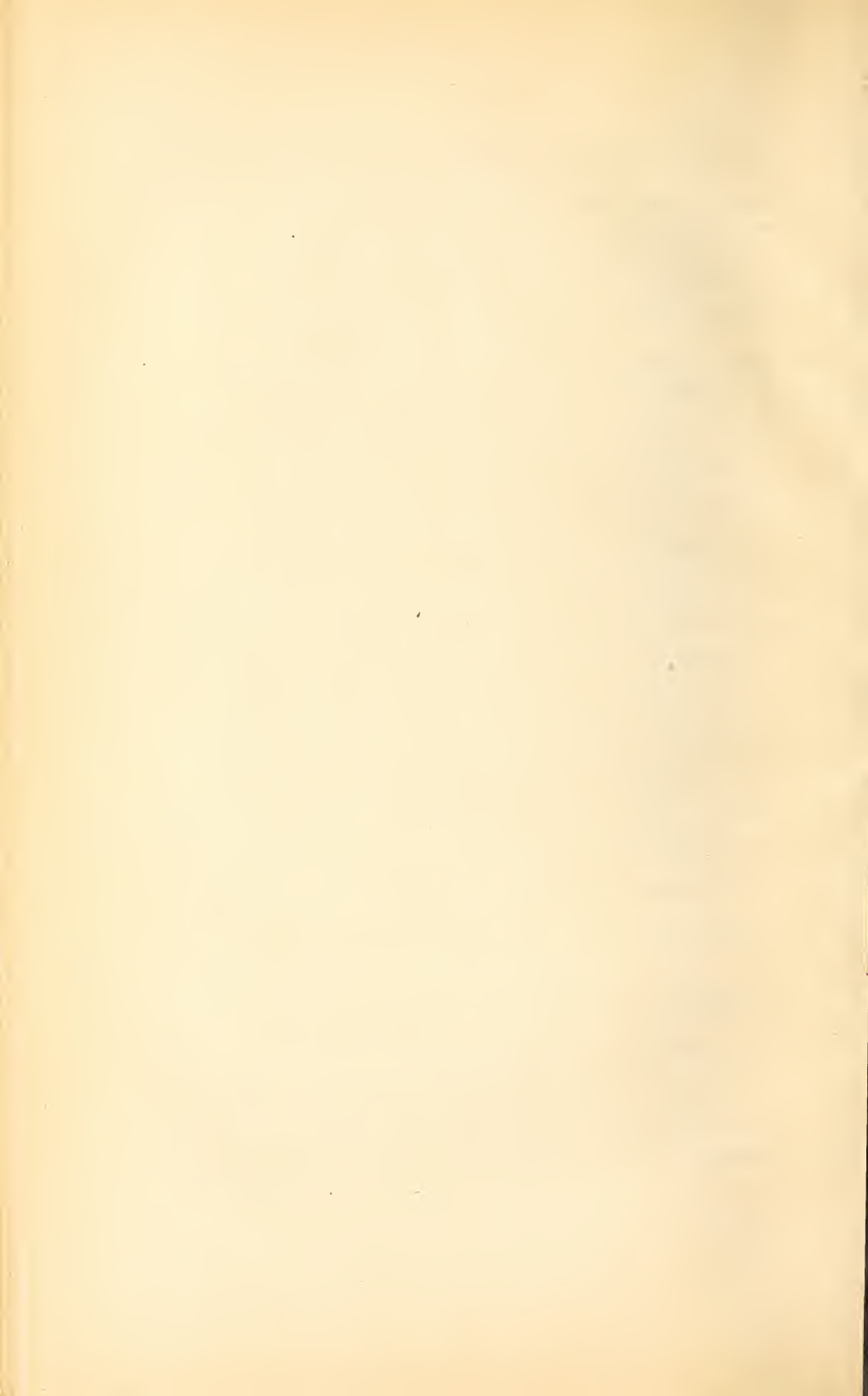
Q. What practice of this Church in the consecrating of Bishops follows the injunctions of the Catholic Code?

A. The practice of requiring three Bishops to consecrate a Bishop. (Apostolic Canons 1).

Q. What practice of this Church, in other ordinations, is enjoined by Canon in conformity with the Catholic Code?

A. Section VI. of Canon IV, of Title 1, General Canons, declares,, That "*agreeably to the practice of the Primitive Church*, the stated times of ordination shall be on the Sundays following the Ember weeks, &c."





Q. Where is this practice of Ember Weeks enjoined in the Primitive Church ?

A. Gelasius' Decrees (2) 5th Century, A.D. 492. But upon urgent occasions Bishops may be authorized to give Holy Orders, *extra tempora prescripta*. Gib. Codex, p 160.

Q. Does our Church, in recognizing Ancient Law and the Ecclesiastical Law of England, follow the example of the English Church in yielding obedience to the Catholic Code or Body of the Canon Law, and also to the Foreign Canon Law.

A. Yes. Bishop Gibson says, "As in all cases where no rule was provided by our Domestic Laws, the Body of the Canon Law was received by the Church for a rule; so there was no objection against receiving "foreign or Ante-Reformation Canon Law" in any instance whatever, *unless it appeared, in that particular instance to be foreign to our Constitution or contrary to our Laws.*" Can. 31, Ch. of Eng., also, refers to "Ancient Fathers," Od. Essay Ass. Al., p 56. Gib. Codex, Introd. Dis. 28. Grey's Ec. Laws, p 10.

Q. What is the Analogy precisely ?

A. Both Churches are amenable to the Body of the Canon Law where not superseded by Domestic Law: and as the Ante-Reformation (or Foreign) Law (imposed by Rome) is to the English Church, so is the English Canon Law to the Church in the U. S. In other words, the Catholic Code is absolutely obligatory when no rule is provided: the Foreign Code of laws (e. g. the English Ec. Laws in the U. S.) is obligatory with two restraints, (1) that "they are adapted to the Constitution of this Church, and so are *proper* : (2) and not contradicted by the Laws of the land and of this Church, and so are *legal* rules." 25 Hen. VII., C. 21, 1. Bp. Gibson, Codex Introd. Dis., pp 27, 28.

Q. Is every member of the Church bound to obey the Canons of the Catholic Code, and of the English Church, with the restraints above named ?

A. Yes; on "the footing of consent, usage and custom in this Church," or *jus non Scriptum Ecclesiasticum*. Gib's Codex, Introd. Dis. 28. Grey, Ec. Law, pp 9, 10.

Q. May any member of the Church, on his own motion, decide what is the Common law or custom of the Church ?

A. No. He must first have the express warrant of ecclesiastical authority for the introduction of ceremonies or novel practices in this Church.

Q. Who or what are the authorities that may decide on the Law of the Church in England, and of the Prot. Epis. Ch. in the U. S.?

- A. (1) The Law of the Church of England is determined by the Convocation, by Parliament, by accepted commentators, as expounded in her Ecclesiastical Courts. They are the witnesses to the members of that Church of what is Catholic and Canon Law.
- (2) The law of the Prot. Epis. Ch. is determined by the Constitution and Canons of the General Convention; and of the several Dioceses; and of the Rubrics; and by the Articles of Religion; and by the Civil Laws of the State in the premises, as expounded by the Courts, ecclesiastical and secular, in their respective spheres.
- (3) There is likewise the *Law* of "consent, usage, and custom" in this Church; which, together with the decisions of the English ecclesiastical tribunals, respecting the interpretation of Rubrics and rules common to both Churches, is the *Jus non Scriptum Ecclesiasticum* or Common Law of this Church. Hoff., p 45.
- (4) The Laws Catholic, to which all separate or national Churches are bound to conform.

Q. What other restraint on individual and private judgment, in respect of doctrine or practice in the Church, may you name?

- A. (1) The restraint on Laymen to "do nothing without the Bishop," according to St. Ignatius' maxim; nor without the advice and consent of the Priest and Pastor under whose guidance the Layman has voluntarily submitted himself.
- (2) The restraint on Deacons, as being specially under the advice and control of the Bishop.
- (3) The restraint on Priests as well as Deacons, in their ordination vow to "reverently obey their Bishop and other chief ministers, who, according to the Canons of the Church, may have charge and government over them; following with a glad mind and will their godly admonitions, and submitting themselves to their godly judgments." And furthermore, the vow of the Priest to "maintain and set forward as much as lieth in him, quietness, peace and love, among all Christian people and







especially among them that are committed to his charge."

- (4) The restraint on the Bishop to set forward charity and peace (the same as that of the Priest,) together with his vow to "diligently exercise such discipline as by the authority of God's word and by the order of this Church is committed to him."

Q. What further statement, in the Preface to the Book of Common Prayer, confirms the declaration "that this Church was far from intending to depart from the Ch. of Eng. in any essential point of doctrine, discipline, or worship, or farther than local circumstances require." Hoff., Int. p 39.

A. The statement that "in every Church, whatever cannot be clearly determined to belong to doctrine must be referred to *discipline*." Pref. to Bk. of Common Prayer. 16 Oct., 1789.

Q. What is the sense of the term "discipline" in Ecclesiastical writings?

A. Two fold. (1) The administering of punishment for offences. (2) The regulation and government of the Church.

Q. In which sense is the word "discipline" here used?

A. In the sense of the order and law of the Church for its proper government.

Q. Will you give examples of this use of the word?

A. In the preface to the English Book of Common Prayer, (2d and 5th Ed. VI.) it is said, "of Ceremonies, <sup>why</sup> some be abolished and some retained," "Although the keeping or omitting of a ceremony, in itself considered, is but a small thing, yet the wilful and contemptuous transgression of a common order and *discipline* is no small offence before God." Again, it speaks of "those ceremonies which do serve to a decent and godly *discipline*." So likewise HOOKER says, "As we are to believe forever the articles of evangelical *doctrine*, so the precepts and *discipline*, we are in like sort bound forever to observe."

Q. What is the argument, hence derived, that our Church retained the same Ecclesiastical Laws after the Revolution which it possessed before the Revolution further than local circumstances required?

A. The body of English Ecclesiastical Law was an undoubted part of the "*discipline*" of the English Church; this Church retains the "*discipline*" of the Church of England, and therefore the English Ecclesiastical Law is affirmed to be the law of this

Church, so long as it is applicable and unrevoked. Hoff., pp 38-41.

Q. How many periods are there of the Canon Law of the Church of England?

A. *Four*; The British, the Anglican, the Norman, and the Reformation periods.

Q. What are their respective dates?

- A. (1) The British period, from the Apostles' time to the arrival of the Monk Augustine, A. D. 596. Spelman, Wilkin's *Concilia Magnae Britannicæ et Hibernicæ*. Councils of Great Britain and Ireland, by Haddan and Stubbs, Oxford, 1869, contains Records from A. D. 200.
- (2) The Anglican period from the 7th Century to A. D. 1066, the coming of William the Conqueror.
- (3) The Norman Period from 11th Century to the Reformation.
- (4) From the Reformation to this time.

Q. What was the origin of the Laws of the *British Church*?

A. They are derived from primitive and Apostolic times with the Episcopal regimen' and authority.\* Augustine found the British Church in the use of the Liturgy of Gaul derived from the East.

Q. How were the Ancient Laws of the British Church to be changed?

A. Ecclesiastical Laws could not be changed except by a National Synod, consisting of "Bishops and other learned men of the clergy." Hoff., p 48. Dawson, *Orig. Leg. Bk. VI. Cap. 4.*

Q. What were the sources of Ecclesiastical Law in the *Anglican Period*, or 6th to the 11th Century?

- A. (1) The Laws under the Saxon Kings; those on spiritual subjects styled "*Monumenta Ecclesiastica*" touching the Church and Clergy, and known as "Institutions."
- (2) Those styled "Laws," which touched the Laity in both temporal and spiritual matters.

Q. How were these "Laws" which affected the Laity and Clergy made?

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\*The earliest record of Christians in Britain A. D. 208, Tertullian Adv. Jud. VII. Origen, A. D. 239. Homily IV and VI. Sozomen (A. D. 300) Hist. Ec. 1, 6. Eusebius A. D. 337, 340, Vit. Constantine II; 28. Hillery, et al. St. Alban Martyr, Diocletian Persecution, A. D. 304. British Bishops at Council of Arles A. D. 314. British Bishops (A. D. 325) assent to Council of Nice respecting Arianism and Easter. British Bishops at Council of Sardica (A. D. 350) and at the Council of Ariminum (A. D. 359). See documents in Haddam and Stubbs Ox. 1869.







A. In the Great Saxon Council or Witenagemote of the Realm, at which there was a representation of the Laity.

Q. How were the "Institutions" or Monumenta Ecclesiastica enacted?

A. The Clergy of the Witenagemote departed into a separate Synod and made their Canons; they brought their Canons from the Synod to the Witenagemote, "to be ratified by the King with the advice of his great men, and so made the Constitutions of the Church to be laws of the realm" "and the Norman revolution made no change in this respect." Kenneth Ecclec. Synods, p 249. Hoff., p 52.

Q. What do you learn from these Laws and Institutions respecting the British and Anglican Church?

A. That the Councils of clergy were sufficient for the government of the clergy, and that where the Laity were concerned in Spiritual matters, the laws of the Church must have been passed or ratified by the Witan, in which a representation of the Laity existed. Hoff., p 52.

Q. Give me an example of the force of this Ancient Law in modern times? Hoff., p 50.

A. In a question of marriage in the case of "Queen vs Mills," in 1864, the decision was grounded on one of the Laws of King Edmund (A. D. 950), that the presence of the Priest at the nuptials was necessary, who should, with God's blessing, "bind the union to all prosperity."

Q. Were these Synods or Gemotes (as they were called) frequently held by the Bishops and Clergy? Hoff., p 54.

A. Yes. Records exist, in Bede and others, of five Church Gemotes, A. D. 673 to 794.

Q. What are the sources of Common Law in England in the 3d or *Norman Period*—middle of the 11th Century, to Reformation? Hoff., p 53.

A. "The legislation of the Church after the Conquest to the Reformation (exclusive of the acts of Parliament) is contained in the Legatine and Provincial Constitution. Hoff., p 53.

Q. What are the Legatine Constitutions?

A. They are the Constitutions of Otho, the special Legate of Pope Gregory IX., A. D. 1236, and of Othobon, Special Legate of Pope Clement IV., A. D., 1268, in the reign of Henry III. They were made in Synods in London, wherein sat the Archbish-

ops of both Provinces, Canterbury and York, and other dignitaries, who duly represented the whole realm, and therefore were express National Ecclesiastical Laws. Johnson's Eng. Can. Vol. II., pp. 150, 211. Grey's Ec. Laws Intro., p 8. Gibson's Codex Pref. 12.

Q. What are the *Provincial* Constitutions?

A. Such as were published from time to time by several Archbishops of Canterbury from Stephen Langton, A. D., 1206, in the time of King John to Henry Chicheley, A. D. 1414, in the time of Henry V., being 225 Constitutions of 14 Archbishops. The Province of York received these Constitutions by consent and use. Gibson's Codex Pref., p 10.

Q. What are these Legatine and Provincial Constitutions styled?

A. The "*Common Law of the Church of England.*" Gibson's Codex Introd. p 27. Grey's Ec. Law, p 8.

Q. Where may best be learned this Common Law?

A. (1) In the Commentaries of John of Athon, on the Legatine Constitutions; and in the Commentaries of Lynwood on the Provincial Constitutions, Reigns of Henry V. and Henry VI. A. D. 1380-1446.

(2) The Courts of Civil and Canon Law in England regard these Commentaries as "*the witnesses of the practice of the Church of England*" in their respective ages, which practice having continued, in very many cases, down to the present age, upon their evidence and authority, their rules are become for the most part and in effect the *Common Law of the Church.*" Gibson's Cod. Pres. 12.

Grey's Ec. Law Int. p. 8.

Q. What higher recognition of these laws and rules now prevails? Hoff., p 60.

A. The Statute of Parliament, 21st Chap. of Henry VIII, declares that the people of the realm had bound themselves to them by long use, *not as the laws of any foreign prince or prelate*, but as customs established as laws of the realm by said sufferance, consent, and custom.

Q. How is the English Canon Law divided?

A. Into Foreign and Domestic. Gib. Cod. Pref. 8.

Q. What is the Foreign Canon Law?

(1) The *Apostolical Canons*, or the Code of the Primitive Church. It embraces the Canons of Bishops and Synods of the 1st and 2nd Centuries, being 85 in number, and collected





into one body, A. D. 200. See Cotelierius Pat. Apostol: C. 16, 17. Beveridge "Synodicon and Cod. Canon Ec. Prim. vindicatus et illustratus."

- (2) *Canons of the Catholic Church*; containing 207 Canons, viz: 20 Canons of Nice; 25 of Ancyra; 14 of Neo Cæsarea; 20 of Gangra; 25 of Antioch; 59 of Laodicea; 7 of Constantinople; 8 of Ephesus; 29 of Chalcedon
- (3) *The Code of the African Church*, 138 in number.
- (4) The collection of *Johannes Scholasticus*, Patriarch of Constantinople, embracing all Canons then in force, (A. D. 560,) and numbering 377.
- (5) *The Code of the Latin Church*, collected by Dyonisius Exiguus (A. D. 530) embracing 402 Canons; and also decrees of eight Popes, from Pope Siricius to Anastasius, under whom Exiguus flourished: to which other hands have added the decrees of six Popes, from Hilary to Gregory I.
- (6) *The Code of the Oriental Church*, settled in the Synod of Trullo, A. D. 683, and containing 724 Canons.
- (7) *The Code of Photius*, Patriarch of Constantinople, (A. D. 880). This Code contained all the Laws and Canons of the Catholic Church for 800 years, which were then in use and authority, numbering 659 Canons.\*
- (8) *The Code of the new Canon Law of the Latin Church*, consisting of spurious decrees and Papal decisions and orders, invented and published, A. D. 785, by Isadore Mercator (or Peccator) under Pope Adrian, who was "the true Creator of the Modern Papacy" (See "The PAPACY," by the Abbe Guettee, Paris; New York, Carleton; London, S. Low Son & Co., 1867, p 261, Am. Ed.) These "*False Decretals*," with other papal decisions, were established in the Western Church, by Pope Nicholas, A. D. 836. They concentrated all authority at Rome and are the foundation of the claims of the Papacy.

Q. How do you prove that these "Decretals" are false?

A. (1) *Cardinal Bona* frankly calls them a "pious fraud."

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\* See a Minute Summary of Ec. Laws in Essay Associate Alumni 1847, by Bishop Odenheimer.

- (2) *Baronius* would not use them in his Ecclesiastical Annals, "lest the Roman Church should seem to require-suspicious documents to establish her rights." Abbe Guettee, p 59, et seq.
- (3) FLEURY (History Eccle. XLIV : LIV) says "The subject matter reveals their spuriousness." "They speak of "Archbishops, Primates, Patriarchs, as if these titles "had existed from the birth of the Church. They forbid "the holding any Council, even a provincial one, with- "out permission of the Pope, &c. Finally the principal "subject of these *Decretals* is that of complaints against "Bishops, etc."
- (4) The Abbe Guettee on "*the Papacy*," has gathered conclusive demonstration of the Apochryphal character of the "False Decretals."

Q. Were these False Decretals received in England. Hoff., p. 42.

A. For a time and unwillingly, but as "new Law," which crowded out the Ancient Canon Law; so that "an ingenious "author, about the year 1046, in a comparison between the "Churches of the East and West says, "In the Greek Church are "many Canonists, and in the Latin Church are no Canonists, but "many Decretalists." Dawson Or. Leg. Book I., C. 15.

Q. How did the Reformers treat this new Law of Rome?

A. Cranmer, in the Preface to "*Reformatio Legum*," denounces the whole of it. Hoff., p 42. See Burnet's Hist. Refor., p 257.

O. What are Domestic Canons in the Church of England?

A. Those which have been made from time to time by ecclesiastical authority within the Realm, whether before or since the Reformation. Gib. Cod. Introd. Dis. p 29.

Q. What do you mean by Ecclesiastical Authority?

A. The Canons and Constitutions made in Provincial Synods. They were confirmed and published, before the Reformation, by the Metropolitan; after the Reformation, by Royal assent and license (c. 25 Henry VIII.) The authority of Canons affecting the *Laitie*, after the Reformation, are only those which were accepted as ancient usage or were confirmed by Parliament. Grey Ec. Law, Int. p 11., note.

Q. What are the sources of English Ecclesiastical Law in the 4th or *Reformation Period*?







A. The Ecclesiastical "Common Law:" the Canons of Convocation confirmed by Royal authority: and the Statute Law of Parliament.

Q. What Canons have been authorized by Convocation?

A. Those made in Convocation of the Province of Canterbury in the first year of James I., which are therefore distinguished as the Canons of 1603, though they are taken from Canons and Constitutions made in the reign of Queen Elizabeth—these were also received and passed by the Province of York, in 1605. Gib. Cod. Pref. p 10.

Q. What Statute Law is considered as part of the Ecclesiastical Law of England?

A. Statutes made from time to time to enforce both Common and Canon Law, for the suppression of vice and immorality and for the protection of the Church. Gib. Cod. Int. p 30.

Q. Are the Rubrics in the Liturgy a part of the Statute Law?

A. Yes; as having been confirmed in Parliament by the Acts of Uniformity in the reigns of Ed. VI; Queen Eliz., and Charles II. Gib. Cod. Intro. Dis. Pref. 10.

Q. Are the XXXIX Articles of Religion a part of the Statute Law?

A. Yes; though originally made in Convocation, they are required to be subscribed and assented to by an express Act of Parliament, 13 Eliz. c. 12. These were mostly taken from a like body of Articles compiled in the reign of Edward VI. Grey's Ec. Law, Intro. p 13. Gib's Cod. Intro. Dis. Pref. pp 10, 11.

Q. What other sources of Ec. Law are to be regarded?

A. "The noble Statutes of Henry, Edward, and Elizabeth; the "injunctions of the two latter in 1547 and 1559; the Synod of "Archbishop Parker, 1571; the Articuli pro cleri of 1584; the "Capitula of London, 1597, together with the Canons of "1603, and all previous institutions not superseded." Hoff., p 61. Dawson Orig. Leg. Book 6, Chap. 8, p 157.

Q. Was this Body of English Canon Law, the Ec. Law of the Church in the Colonies, at the date of the Royal Charters?

A. Yes; if followed by settlement and the establishment of a Church and public worship. Hoff., p 60, 61, note.

Q. What is the date of the first Church erected on this Continent?

A. On the 19th Dec., 1606, the first ordained minister of the

Ch. of Eng. embarked as a Missionary for the shores of America. In the Spring of 1607 the services of the Ch. of Eng. were first administered on this Continent. Hoff., p 61.

It is claimed that the first services of the Ch. of Eng. were in Maine. See His. Soc. Rec. of Maine.

Q. Were all the Ecclesiastical Laws which we have enumerated in full force in England at the time of the settlement of the American Colonies?

A. No. Some were modified by the Parliament, such, for instance, as related to Dissenters. Some had grown obsolete; some incapable of being enforced; others were superseded by Statute Law. Hoff., p 61. Cardwell's Synodalia, Pref. p 24.

The force of custom and disuse has varied or extinguished the obligation of certain Canons. Stillingfleet on Rights and Duties, 261, 267. The Bishops and other high Spiritual persons, though not competent to annul a Canon formally, instructed and directed the conscience as to the observance of them Hoff., p 62. Card. Syn. Pref., p 24.

Q. What exceptions and modifications in the Eng. Canon Law did our Revolution and Ecclesiastical Independence superinduce?

A. The great bulk of the Canons of 1603 are not binding on our Church for various reasons.

- (1) The principles of the first twelve remained, but not in the form therein declared.
- (2) The 13th to the 76th inclusive, are either inapplicable (such as those relating to Colleges) or the subjects of them are provided for and regulated by Canons of our own—with a few exceptions.
- (3) The Canons 77, 78, 79 are wholly inapplicable.
- (4) The 127th to the 141st are local in their nature, and have no bearing here. Hoff., p 62.

Q. Will you sum up the several ingredients of the English Ec. Law as it obtained when the Church was planted in this country?

A. *First.* The Body of the FOREIGN Canon Law, derived from the papal domination, was, presumptively, of no force; yet those regulations which had been adopted by use, custom and sufferance as the *Common Law Ecclesiastical*, had force in consequence: the burden of proof, however, resting on the party affirming.

The Legatine Constitutions of Otho and Othobon stand on this footing.







*Second.* The Provincial Constitutions have the presumption of legality and obligation: requiring the party denying to show why they should not prevail.

*Third.* The decisions of Civil and Ecclesiastical tribunals, the cases and precedents in the Spiritual Courts, together with the comments and writings of eminent men are to be named as *testimonials and witnesses* of the Common Law of the English Church.

*Fourth.* The Statutes of the Realm and the Canons of 1603. The Canons of 1603 being agreed upon in Convocation, with the Royal License under the great Seal, were binding on the Clergy; but were binding on the Laity only by long use and acquiescence, or by express recognition of the Civil tribunals. Hoff., p 63.

Q. Did this constitute the Body of the Law of the Church in the Colonies?

A. Yes. Many modifications, however, arose from specific provisions of charters, or particular laws of Colonial assemblies, as well as from those changes in the situation and usages of the community which rendered some provisions incompatible or inapplicable. Hoff., p 64.

Q. What change did the American REVOLUTION bring with it?

A. (1) Alterations in the Law and Discipline and Liturgy of the Church, all well defined in one system.

(2) The Constitution of the Church at large and the organization of the several Dioceses, have established a body of regulations, partly original, partly adapted.

(3) These, together with statutes of the Civil authority, cover a very extended field of Eccl. Law in the Prot. Epis. Church.

Q. What Law prevails in cases not provided for as above?

A. The law of the English Church. By that law such cases are *presumptively* to be decided; leaving the party contradicting to show that such law is repugnant to some principle, settled custom or institution of our own, secular or ecclesiastical. Hoff., pp 63, 64.

#### SPIRITUAL COURTS AND PROCEEDINGS IN THE CHURCH OF ENGLAND.

In the British and Anglo-Saxon periods, and until the reign of William the Conqueror, the Court for Ecclesiastical and Temporal matters was the same; namely, the *County Court*, where the

Bishop and Sheriff, or their representatives, sat jointly for the administration of justice; the first in matters Ecclesiastical by the Laws of the Church; the second, in matters Temporal by the Laws of the State.

William the Conqueror, separated the Ecclesiastical Court from the Temporal Court, by a charter to that effect.

The Spiritual Courts are enumerated as follows:

1. The ARCHDEACON'S COURT, with jurisdiction in his Archdeaconry. The Judge of this Court is styled "The Official of the Archdeaconry." Appeals lie to the Bishop or Diocesan. 24 Henry VIII., c. 12.

2. The CONSISTORY COURT, which is the Court of the Archbishop or the Bishop in every Diocese, held in their respective Cathedral Churches, for the trial of all Ecclesiastical Causes within the Diocese. The Judge is styled "The Bishop's Chancellor." When appointed by special Commission to hear Causes in remote parts of the Diocese, the Judge is styled "Officialis Foraneus," or "Commissary." Appeals lie to "the Court of Arches" and to "the King in Chancery."

3. The COURT OF PECULIARS of the Archbishop of Canterbury and of York, and of Bishops, Archdeacons, Deans, Deans and Chapters, and Prebendaries, &c.

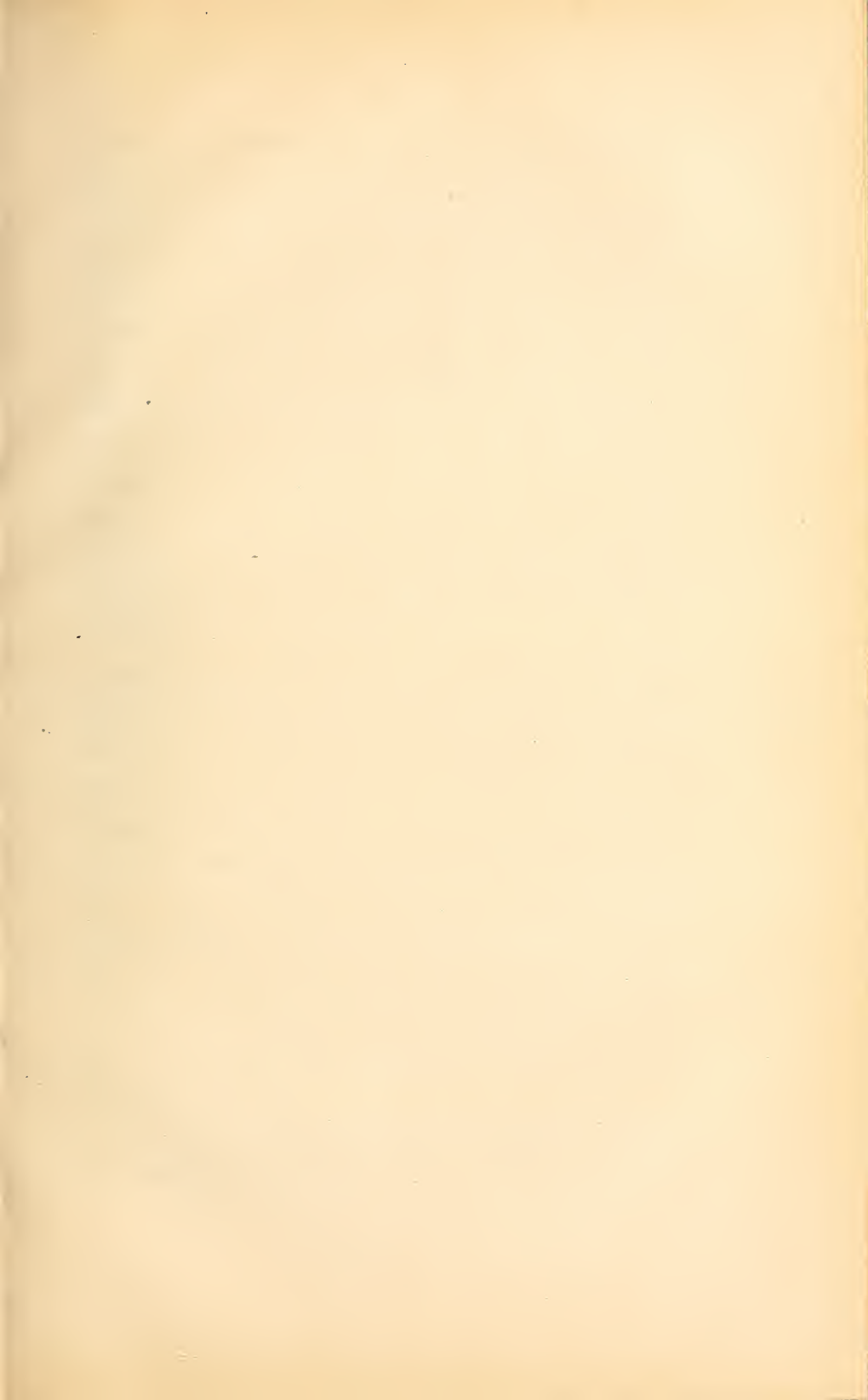
These are Courts to determine the privileges of these dignitaries, to enjoy a peculiar jurisdiction in certain places, where their seats and possessions are, and whence their endowments are derived. The jurisdiction in the COURT OF PECULIARS is administered by Commissioners, the chief of whom is the "Dean of the Arches." The Province of Canterbury possesses more than a hundred "Peculiars" in Seven Dioceses,

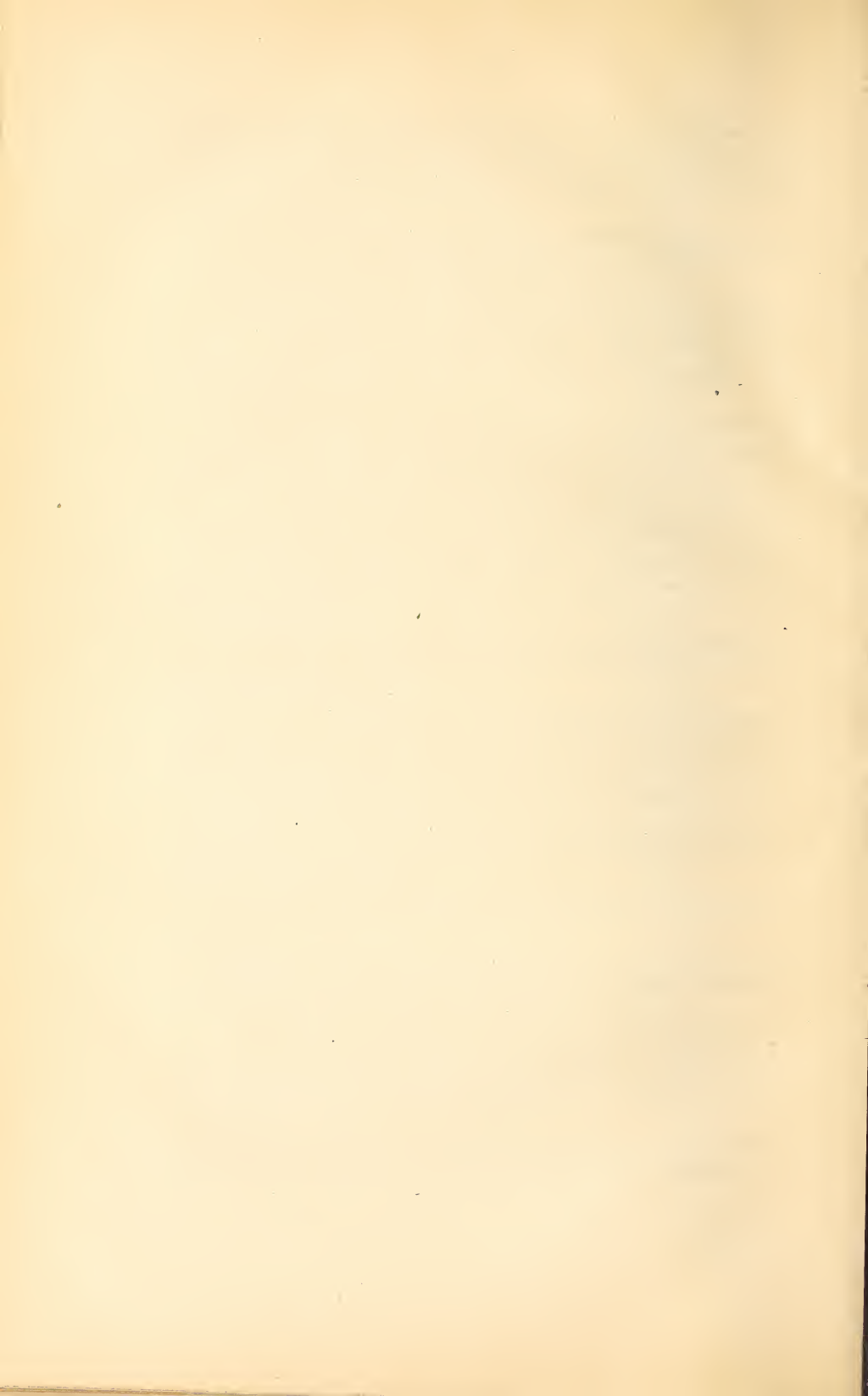
4. The PREROGATIVE COURTS of the Archbishops of Canterbury and York.

In these Courts all Testaments and Wills are proved, and Administrations on the Estates of Intestates are granted. That of Canterbury is called "Doctor's Commons" in London.

5. The COURT OF ARCHES, CURIA DE ARCUBUS, so called because it was anciently held in "Bow Church," or the Arched Church of St. Mary in Cheapside, London, styled *Ecclesia St. Mariæ de Arcubus*.

This Court of Arches has jurisdiction upon appeal in *all* Ecclesiastical Causes, except what belong to the Prerogative Court.





All manner of appeals from any Bishops or their Chancellors, Commissaries, &c., are directed here; as well as all appeals from the Commissaries of the Archbishop of Canterbury.

The Judge of the Court of Arches is styled, "*The Principal Official of the Archbishop*,"—OFFICIALIS DE ARCUBAS." This Court is held in "Bow Church," by reason of the Archbishop's having ordinary jurisdiction in that Church as the chief one of his "Thirteen Peculiars," in London, and where the Dean of those Peculiars, commonly called "Dean of the Arches," held his Court. The office of the *Vicar-General* of the Archbishop, the offices of the *Official Principal*," and the office of the *Dean of the Arches*, were formerly separate, but are now united in one and the same person; while his jurisdiction is distinct as of old. As *Vicar-General* he represents the Archbishop in his absence, *except in hearing causes*. As *Dean of the Arches*, his jurisdiction is limited to the *Archbishop's Peculiars in London*. He receives appeals throughout the *Province*, not as *Dean*, but as the *Official Principal* and *Judge of the Arches* in the place of the Archbishop. Appeals lie from this Archbishop's Court to the King in Chancery.

#### 6. THE KING IN CHANCERY.

This Court was established by 25 Henry VIII., c. 19 as a Court of final appeal from the Court of Arches or the Court of the Archbishop. Upon every such appeal a Commission is directed under the Great Seal to such persons as the King shall nominate; who, on account of the Special Commission, or Delegation, are sometimes styled "*The King's Delegates*."

The Statute which entitles the King to ultimate cognizance by Commission, does not limit him, but leaves him wholly to his own choice, with power of appointing Commissioners out of the Temporality. None but spiritual persons were Commissioned as the "King's Delegates," until 1664—seventy years after the erection of this Court. Afterwards, but very seldom, some of the Nobility or Common Law Judges were joined in the Commission. In 1639, in the time of the Martyr King, Charles I., from whence we date the downfall of the Bishops, and their jurisdiction which ensued, we may date the present RULE of Mixture of Temporal and Spiritual Judges in that Court.

The Court now consists of the Judicial Committee of the Queen's Privy Council; of which there is no quorum unless the Archbishop of Canterbury, the Archbishop of York, or the Bishop of London



be present and assisting. The Queen, after definitive sentence, may grant a Commission of Review—for there are no words in the Statute to restrain her. The Pope, formerly as Supreme Head, could do the like. See Gibson's Codex, 1018, 1046 to 1083; Introductory Dis., p. 21; Wood's Inst., 504, &c.; Grey's Ecc'l Law, p. 362-392; 4 Ins., 340; Littl., 232.

#### THE MANNER OF ELECTING AND CONSECRATING ARCH-BISHOPS AND BISHOPS IN THE CHURCH OF ENGLAND.

Bishoprics in England, under the Pope's usurpation, were DONATIVES and bestowed "*per Traditionem Annuli et Baculi*." About the eighth year of Henry I., A.D. 1108, they began to be elective. Being of "the King's Foundation," he is, in right thereof, "Patron" of them all.

It may be remembered that Henry I., Beauclerc, granted to the English a CHARTER, and married Maud, a Saxon: thus uniting the Norman and Saxon interests, and restoring some of the ancient privileges of the British Church, among which may be reckoned that of Choosing their Bishops.

The manner of Electing and Consecrating Bishops since the Reformation is as follows:

The Dean and Chapter of the Cathedral, signifying to the King the death of the former Bishop, are to pray leave to elect another Bishop. Upon this the King grants his license to them, under the Great Seal, to proceed to an election; laying no other restraints or limitations, but only this, entreating them that the Ecclesiastic whom they would choose as their Bishop and Pastor should be a man devoted to God, loyal to the King, and manifestly a fit and trusty person in the affairs of the Kingdom. "*Rogantes—quod talem vobis Eligatis in Episcopum et Pastorem, qui Deo devotus, nobisque: et Regno nostro utilis et fidelis existat.*"

This is all the restraint they are under from the King, in his license, styled, "*Conge d' Elire.*"

But at the same time there goes with the license a "*Letter Missive*," containing the name of the person whom they shall elect, by virtue of which they are to choose the person so named, and no other, in due form, within twelve days; and in default of that, the King may nominate, and present by his letters patent, to the Metropolitan, if a Bishop; or, if an Archbishop, to the Metropolitan







and two other Bishops; or else to four other Bishops, who shall consecrate him.

After the person is elected, the Proctor of the Dean and Chapter, exhibits to the Bishop-elect the Instrument of Election, to which he gives assent, in due form, before a Notary public: thereupon the King is certified of the election made under the seal of the Dean and Chapter. Upon the certificate the person is styled, "Lord Elect of N. N. who thereupon does homage," to the King, and the election is certified to the Archbishop under the Great Seal. The Archbishop is required to Confirm and Consecrate him.

The method and order of *Confirmation* is a long and formal process. The Archbishop gives a Commission to his Vicar-General to "confirm the election," who then cites all such as have any objections against the Bishop-elect to appear before him; the Proctor exhibits the Certificates of Election and of the Royal assent. After which the Vicar-General administers to the Bishop-elect, the oaths of Supremacy, of Simony, and of Canonical Obedience. Whereupon the sentence is read and subscribed by the Vicar-General, and the Election is decreed to be good and *confirmed*.\*

After Confirmation, the Archbishop and Bishops proceed to *Consecration*, according to the form established, to the number at least of three. Apost. Can. 1.

In the case of *Translation* of a Bishop, Confirmation, and all that precedes it, is required.

After Election and Confirmation, the Bishop is invested with a right to exercise spiritual *jurisdiction*.

So soon as he is *consecrated*, the prior dignities and benefices of every Bishop *created* become void; or in case of *Translation*, they become void after the Bishop's *Confirmation* in his new see. Every Bishop, whether created or translated, is bound, immediately after Confirmation, to make a legal conveyance to the Archbishop of the next avoidance of one such Dignity or Benefice belonging to his See, as the Archbishop shall choose. This is called "the Archbishop's *Option*." But a writ of "*Commendam*" may intervene, which retains the Benefice in the same person wherein it was before. If

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\* In the case of Archbishop Parker "the Confirmation" was made in "Bow Church," December 9, 1559. and afterwards the Judges adjourned to "the Confirmation dinner" at the "Nag's Head Tavern," in Cheapside, close by. Hence, after forty years, the Papists started the fable of the "Nag's Head Consecration." See Bishop Bramhall's Tracts, London, 1726, p. 17, et seq. and Williams, Sharpe, Earbury Tracts.

the Incumbent of the Promotion chosen by the Archbishop outlives the Bishop who is to be consecrated or translated, the Option becomes void, inasmuch as the Grantor could not convey any right or title beyond the term of his continuance in that See.

After Consecration the Bishop sues for his *Temporalities*, being all things appertaining to his See, which a Bishop receives by "liv-  
ery from the King,"—as manors, lands, testaments, advowsons, titles, &c.

The Bishop is next *Inthroned*, either himself or by proxy, on mandate from the Archbishop to his own Archdeacon, at which time the King makes "Restitution of the Bishop's Temporalities," and he is then completely installed as one of the "Peers of the Land," 25 Ed. III., Stat. 3, c. 6, and is a member of the "First Estate of the Realm." Gib. Cod, pp. 12 to 137; Grey's Ec. Law, p. 30, et seq.

Q. But what if the Dean and Chapter refuse to elect, or the Archbishop to confirm and consecrate the nominee of the Crown?

A. "They shall incur a *Praemunire*."

This is a Statute made in 16 Richard II., A.D. 1393, against purchasing bulls or other instruments from Rome or elsewhere in derogation of the Crown. Other transgressions were subsequently made to incur its penalty. It is called *Praemunire* from the words of the writ; "*Rex vicecomite, etc., Praemunire, or praemonere facias praefatum A.B. quod sit coram nobis*—signifying the offence, and appointing a certain day for this offender to appear and answer.

If he appear and plead, and the issue be found against him, he shall be "put out of the King's protection:" that is, be disabled from having any action or remedy by the King's laws and writs; he shall forfeit all his goods, and be ransomed only at the King's will.

If he do not appear or cannot be found, he is proclaimed an outlaw, and all his goods and chattels are forfeited to the King. Gibson's Codex, pp. 80 et seq.

Such is the frightful penalty of *Praemunire*, which the Dean and Chapter, if they fail to elect, and the Archbishops and Bishops, if they decline to confirm and consecrate the person nominated by the King as Bishop to a vacant Diocese, incur.

In later times, even in these days, the first Lord of the Treasury, or Prime Minister, exercises the Royal Prerogative, and names the person to be elected, who is thereupon duly chosen, (or rather







voted for), and consecrated to the holy office of an Apostle in the Church of God.

The liberties of the Church are thus invaded, trampled on, and set at naught by what is styled, as if in derision of the Church, "*The Union of Church and State.*"

Contrast the present subjection of the Church of England with its condition during the Anglo Saxon and early Norman periods, as reported to us in History and by Ecclesiastical commentators.

Divers of the Kings before the conquest, particularly Edward the elder, Edgar, Canute, and Edward the Confessor, begin their laws with special provisions for the Liberties of Church and Clergy.

And the first Article of Magna Charta, or the Confirmation of Liberties, granted by Henry III. A. D. 1225, is in these words:

"First, we have granted to God, and by this our present Charter, have confirmed for us and our heirs, forever, that the CHURCH OF ENGLAND SHALL BE FREE, and shall have all her whole Rights and Liberties inviolable."

And this Charter was confirmed, and attested, and renewed, most solemnly, by many Kings and Parliaments, by Edward I: by Edward III, and by subsequent authorities.

The first recognition of "the King as Supreme Head of the Church of England" was made by the CLERGY themselves in CONVOCATION, upon the occasion of a grant of £100,000 by them made to King Henry VIII, to purchase from him pardon for certain offences (particularly for having submitted to the Legatine authority of Cardinal Woolsey,) and to compound the forfeitures incurred by them thereby, under the Statutes of Praemunire and Provisors.

But the King refused to accept the subsidy, or grant the pardon, unless the Clergy would accompany the gift of money with the recognition of the Royal Supremacy in things Ecclesiastical and Spiritual. This claim was for some time under debate, and at length it was deliberately agreed upon in these words: "*Ecclesiae et cleri anglicani, cujus singularem Protectorem, unicum et Supremum Dominum, et quantum per Christi legem licet, etiam Supremum Caput, ipsius Majestatem recognoscimus.*" Gib. Cod. p 28.

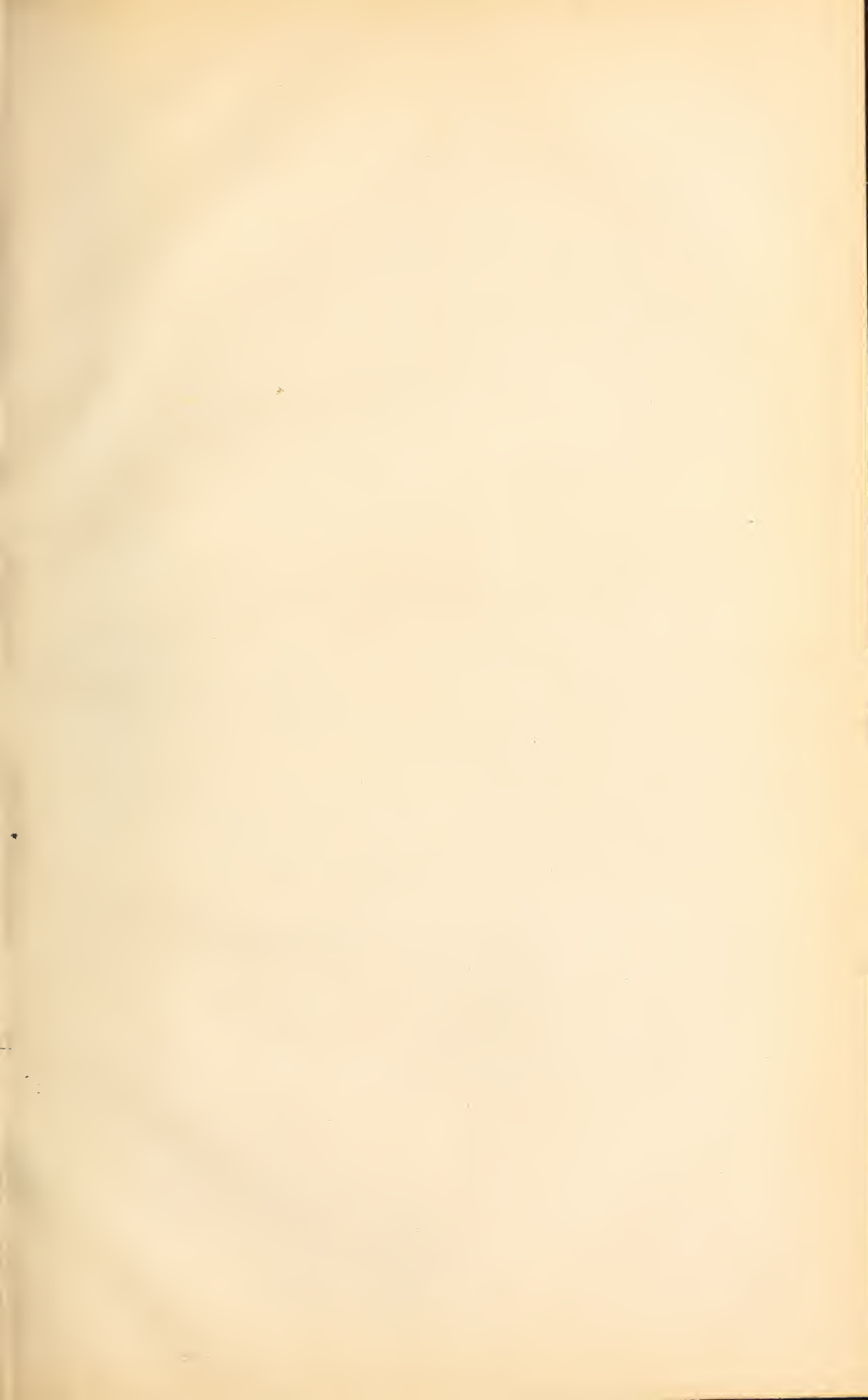
The Ancient Charter of Liberties was thus virtually surrendered by the Clergy, and immediately afterwards was revoked by Parliament, (26 Henry VIII., Chap. I,) which established by law the Supremacy of the King and his heirs. This Statute was repealed

by Queen Mary, but restored in the first year of Queen Elizabeth. The Canons of the Church, (Can. 36,) and the Articles of Religion, (Act 37,) A. D. 1562, re-affirmed the King's Supremacy. The Canons furthermore denounce the censure of Excommunication *ipso facto* (Can. 2) on whomsoever impugns the doctrine, and the Parliament inflicted the penalty of "*Praemunire*" upon the refusing to take "the Oath of Supremacy." The odious "*Praemunire*," and the sentence of "Excommunication," applied by the joint hands of the civil and ecclesiastical authority in the 16th Century, have riveted, even unto this day, the chains which the Church of England painfully and ignobly forged for her own slavery.

Happy are we that our fathers, in winning the political independence of the British Colonies, have recovered, for the Prot. Epis. Church in the United States, the rights and independence of the Apostolic British Church, and have restored to us that Catholic Liberty wherewith Christ hath made us free, and in such measure as not to be entangled again with the yoke of bondage.

The true and Scriptural relations of the Church and State, by the Gospel, are set forth and published in *our* 37th Article of Religion, as follows:

"The power of the Civil Magistrate extendeth to all men, as well Clergy as Laity, but hath no authority in things purely spiritual. And we hold it to be the duty of all men who are professors of the Gospel, to pay respectful obedience to the Civil authority, REGULARLY AND LEGITIMATELY CONSTITUTED."



















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